REGD. GOA - 5

Panaji, 8th April, 1999 (Chaitra 18, 1921)

SERIES II No. 2

OFFICIAL GAZETTE

GOVERNMENT OF GOA

NOTE: There is one Extraordinary issue to the Official Gazette, Series II No. 1 dated 1-4-99 namely, Extraordinary dated 5-4-99 from pages 5 to 6 regarding Notifications from Department of Revenue.

GOVERNMENT OF GOA

Department of Agriculture

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Order

No. 2/12/98-AGR/232

In pursuance of Clauses (1) and (iii) of article 76 of Memorandum of Association of the Goa Horticultural and Plantation Crops Development Corporation Limited, the Governor of Goa is pleased to reconstitute the Board of Directors of the Goa Horticultural Development Corporation Ltd. as under:

1. Shri Vivek Rae, Secretary (Agriculture) — Chairman
2. Shri R. G. Joshi, Director of Agriculture — Director
3. Joint Secretary (Finance) — Director
4. Officer-in-charge of NABARD, Panaji — Director
5. Shri Ali Ahmed, Managing Director, Horticulture Dev. Corporation — Director

The above Board shall function until further orders.

This order is issued in surpersession to order No. 2/12/98-AGR/200 dated 15th October, 1998.

R. G. Joshi, Director & Ex-Officio Jt. Secretary (Agriculture).

Panaji, 25th February, 1999.

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Department of Labour

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Order

No. 28/36/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 15th February, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/63/92

Workmen — Party I/Workmen
v/s
M/s Sips Electronics — Party II/Employer

Workmen represented by Shri Subhas Naik.

Panaji, Dated : 19-1-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/36/92-LAB dated 1-10-1992 has referred the following issue for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Sips Electronics, Tivim Industrial Estate, Karaswada-Goa, in terminating the services of the following 7 workmen with effect from 6-4-1992 is legal and justified ?

(1) Durga Naik
(2) Amita Naik
(3) Rajeshri Volvoikar
(4) Bhavani Govekar
(5) Yamuna Govekar
(6) Kalpana Teli
(7) Shashikala Bicholikar

(2) If not, to what relief the above workman are entitled ?"

2. On receipt of this reference, a case at No. IT/63/92 was registered and notices were sent to both the parties. In response to the said notice, Party I, appeared and submitted a statement of claim, wherein, it has been averred as follows:

Party I (hereinafter called as the 'Workmen') were employed by Party II-M/s Sips Electronics, c/o M/s Jet Time India Pvt. Ltd., Karaswada, Bardez, Goa (hereinafter called as the 'Employer'), in its factory for assembling wall clock movements which is the main business of the present employer who has also 3 more sister concerns. For the work of assembling wall clock movements, the employer had engaged several workers, most of whom were females. However, they were paid very meagre salary which was far less than minimum wage. The workmen were not the members of any union initially. However, on 22nd July, 1990 the workmen of this factory and also the remaining three concerns joined Goa Trade & Commercial Workers' Union and accordingly they informed their employer. On 1st October, 1990 the Union submitted a charter of demands to the employer in which several

demands were made. However, the employer did not discuss the charter of demands and on the contrary he started harassing the workmen in many ways. The matter was reported to the Labour Commissioner where meetings were held. However, there was no satisfactory solution. Thereafter, the employer terminated the services of 7 workmen named in the reference without following the mandatory provisions laid down in the Industrial Disputes Act. Since, there was no amicable settlement before the Labour Commissioner, a failure report was submitted in response to which the Government was pleased to refer this dispute to this Tribunal for adjudication. The workmen therefore claim that they should be reinstated in service with all other legal benefits.

3. The notice of this reference was duly served upon the Employer on whose behalf Shri P. K. Lele undertook to appear and hence the case was adjourned . However, on 18th Jan., 1993 Shri Raju Mangueshkar on behalf of Subhas Naik submitted that the dispute between the parties has been directly settled by the workmen with their employer and in view of the settlement (vide Exb. 4) he has submitted that the dispute between the parties no more survives for adjudication and hence the reference should be disposed of accordingly.

4. In view of the state of affairs, I pass the following order.

ORDER

The reference stands disposed of as the dispute between the parties has been settled out of court.

No order as to costs. Government be informed.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/20/89-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G, Manerkar, Under Secretary (Labour).

Panaji, 16th February, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/50/89

Workmen — Party I/Workmen
v/s
M/s Mandovi Hatcheries — Party II/Employer

Workmen represented by Adv. Raju Mangueshkar.
Employer represented by Adv. G. K. Sardessai.

Panaji, Dated : 29-1-1993.

AWARD

In exercise of the powers conferred by sub-section (2) of Sec., 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/20/89-ILD dated 2nd August, 1989 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of Mandovi Hatcheries, Bethora-Ponda, in refusing to concede the following demands shown in Schedule I annexed hereto and enumerated in the Charter of Demands raised by the Union by letter dated 1-8-1987 are justified or not ?

If not, to what relief the workmen are entitled."

2. Schedule-I appended to the above referred issue contains a charter of demands which includes as many as XXII demands.

3. On receipt of this reference, a case at No. IT/50/89 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings. Party I-workman through the Joint Secretary of the Union known as Goa Trade & Commercial Workers' Union has filed a statement of claim wherein an attempt has been made to justify the XXII demands made in the Charter of Demands. Party II-M/s Mandovi Hatcheries by its written Statement at Exb. 3 has tried to deny the material assertions made by the Union and has contended that the demands made by the Union are exhorbitant and hence the management is unable to accept the said demands. Thereafter, the Union filed a rejoinder at Exb. 4 and on considering the pleadings my learned Predecessor Shri S. V. Nevagi framed the necessary issues at Exb. 5 and the matter was posted for hearing. However, after some evidence was recorded, it was submitted by the learned Advocates for both the sides that there was every possibility of settling the dispute and accordingly on 27th Jan., 1993 the learned Advocates for both the sides submitted that the dispute has been settled and accordingly they have filed a settlement at Exb. 14. The same is duly verified. Under their joint application at Exb. 13, the learned Advocates for both the sides have submitted that, in view of the settlement at Exb. 14, a consent award be passed in this case. Now, before acceding to the request made in Exb. 13, I think it necessary to state some of the facts appearing in the pleadings.

4. The Goa Trade & Commercial Workers' Union after the expiry of the previous settlement dated 27-3-85 served a fresh charter of demands dated 1-8-87 containing as many as XXII demands. However, on account of heavy losses suffered by the management and since there was no possibility of any improvement, the management found that it was unable to accede to the exhorbitant demands made by the Union. However, the Labour Commissioner intervened and he made certain suggestions or concessions. However, the Union was not agreeable. However, a settlement was arrived at on 7-4-89 wherein it was agreed that the workman shall accept Rs. 75/- and justification if any, for any amount over and above Rs. 75/- shall be jointly referred for adjudication under section 10(2) of the I. D. Act to this tribunal. It is under these circumstances the present reference has come up for adjudication before this Tribunal. However, as I have stated earlier after some evidence was recorded the parties arrived at a settlement, the terms of which have been duly verified and which can be found at Exb. 14. On considering the same, I have found that the said terms are certainly in the interest of the workman and hence I accede to the request made by the learned Advocates for both the sides in Exb. 13 and pass the following consent award.

ORDER

In view of the settlement at Exb. 14, the following consent award is hereby passed.

Terms of Settlement

I. (i) *Revision of pay scales*

It was agreed between the parties that instead of the current wage pattern, the Revised wage pattern will consist of consolidated Basic wage, Fixed Dearness Allowance. The consolidated basic wages for the month of January, 1993 and for the calendar years 1993, 1994 and 1995 will be as per the Annexure 'A' to this settlement.

(2) All permanent workmen on the muster roll of the firm on 1st January 1993, shall be entitled to a fixed Dearness Allowance of Rs. 120/- during the subsistence of this settlement from 1st January, 1993.

II. *Other Allowances*

The permanent workmen who are on the Muster Roll of the firm on 1-1-93 will also be entitled to the following allowances effective from 1-1-1993;

(a) *Travelling Allowance* of Rs. 60/- per month.

(b) *Compensatory (Cleaning) Allowance* of Rs. 40/- per month.

(C) *Washing Allowance* of Rs. 22/- per month.

These allowances are liable to be proportionately deducted for absence and/or leave without pay. The above allowances shall not be computed for provident fund, ESI, Bonus, Overtime and Gratuity.

III. It is agreed between the parties, that for the operative period from 1-8-1987 to 31-12-1991, the workman who are on the muster roll of the firm on 1-1-93, shall be paid on ex-gratia amount as per ANNEXURE 'B' as under :

(a) Workmen on Muster Roll from 1-1-85 till date: Rs. 2650/-

(b) Workmen who are on the Muster Roll of the firm from the year 1987 till date : Rs. 2200/-

(c) Workmen who are on the muster roll of the firm from the year 1988 till date : Rs. 2000/-

(d) Workmen who are on the Muster Roll of the firm from 1989 and 1990 till date : Rs. 1800/-

IV. It is agreed between the parties that for the calendar year 1992, an ex-gratia amount as compensation towards arrears shall be paid as per the ANNEXURE 'C' to the permanent workmen on the Muster Roll of the firm as on 1-1-1993.

V. *Leave facilities*

It is agreed between the parties that the leave facilities as mentioned in the agreement dated 27-3-85 shall continue to be applicable to all the permanent workmen, during the period of settlement.

VI. *Weekly off*

It is agreed between the parties that the present practice of staggered weekly offs shall continue.

VII. *Paid holidays*

It is agreed between the parties that the employees shall continue to be entitled to 7 paid holidays with wage in a year. In addition, one optional paid holiday with wages shall be granted from the year 1993 onwards, subjects to the condition that on all these paid holidays, there shall be a minimum attendance of 60% of the workmen for normal essential work.

VIII. *Service regulation*

The Union and the Management agrees to get the Standing Orders certified within six months from the day of settlement.

IX. *Bonus*

It is agreed between the parties that the bonus shall be payable as per the current practice and the Management agrees to disburse the bonus a week before the Diwali Festival.

X. *Festival Advance*

In case the employees want festival advance of (not exceeding) Rs. 300/- for 'GANESH FESTIVAL' the amount will be paid and recovered in 3 monthly instalments of Rs. 100/- per instalment from the monthly salary beginning from the following months salary.

XI. Appreciating that it is in the common interest of the Management, the Union and the workmen that the company should be able to sustain and improve it's competitive status and that, this can be achieved through greater operational efficiency and productivity and continued constructive and progressive labour policies and labour co-operation, in consideration of this over all settlement and to maintain harmonious and peaceful Industrial Relations the parties in a spirit of mutual trust and good-will, commit themselves to fulfill the assurances and undertakings given in this settlement and therefore :

a. It is mutually agreed that the Management has a right to enforce discipline and the workers will assist and co-operate in maintaining discipline.

b. The Management, the Union and the workmen undertake to co-operate in maintaining good industrial relations, peace & harmony during the period of the settlement.

c. It is agreed between the parties that other conditions of service, save as otherwise expressly agreed upon or revised/ modified, shall continue to be binding on both parties.

d. The Union and the workmen agreed that:

i) This settlement is in full and final settlement of all demands raised by the Union through their Charter of Demands pending before the Industrial Tribunal and also those raised with the firm during the negotiations preceding the execution of the settlement.

ii) Those demands which are not incorporated in this settlement are not pressed by the Union and are considered to be dropped.

iii) They shall not, during the period of the operation of this settlement, make any new demands or general nature or resort to any form of agitation or restrictive practices.

iv) It is also agreed that during the pendency of this settlement, neither the workmen nor the Union will raise any fresh demands on the matters covered by this settlement and/or demand involving additional financial burden on the firm. This settlement will be binding on both the parties, upto 31st December, 1995 and shall continue to remain in force even thereafter untill terminated as per law.

v) It is further agreed that all maters, disputes and issues arising out of/and in the course of employment/service conditions shall be mutually discussed by the union, with the Management and all out efforts shall be made to resolve issues. To facilitate this and to maintain a continuous communication between the Union and the Management, a quarterly meeting of the Union and Management representatives shall be held to sort out such issues. The Union agrees not to resort to any direct action or work stoppage unless the avenues for settling the issues including the conciliation machinery/Authority under the I. D. Act of 1947 shall be explored.

XII. *Payment of arrears*

It is hereby agreed by and between the parties that the arrears arising out of this settlement shall be paid as under:

(a) The ex-gratia amount as per clause III and ANNEXURE 'B' shall be paid on or before 31st March' 93.

(b) The ex-gratia amount as per clause IV and ANNEXURE 'C' shall be paid on or before 30th April' 93.

No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/22/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. M. de Almeida, Jt. Secretary (Labour).

Panaji, 26th April, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/48/92

Shri Shantaram S. Parab,
H. No. 24, Ward No. 2,
Bordem, Bicholim Goa — Workman/Party I
V/s
M/s V. M. Bandekar,
Suman Niwas
Dr. Atmaram Borkar Road
Panaji Goa — Employer/Party II

Party I represented by Shri K. V. Nadkarni.

Party II Absent.

Dated: 25-1-1996.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 6-7-1992 bearing No. 28/22/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s V. N. Bandekar, Panaji, in terminating the services of their workman Shri Shantaram P. Parab w.e.f. 15-10-90 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/ /48/92 and registered A/D notice was issued to the parties. The Party I (For short "workman") filed the statement of claim which is at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed by the Party II (For short "Employer") in the Head Office as a clerk w.e.f. 1-1-74. That at the time of termination of his services, he was designated as a Head Office representative and his duties were mainly of clerical nature and he was stationed at the head office. That the workman was some times deputed to the Mines and plots with specific instructions to be conveyed to the mines Manager or the plot supervisor and he was required to report compliance of the instructions to the Manager which involved considerable work. That the workman was asked mainly to carry out the work of preparation of bills, statements and checking them, and his work was neither independent nor was of supervisory nature and he had no powers to sanction leave. That since the year 1981, the employer did not pay the salary of the workman regularly, and hence his wages were in arrears for even six months at a time. That due to the non payment of wages regularly, the workman and his family had to undergo lot of hardship and sufferings as a result of which the workman fell seriously ill in May, 1990 due to hypertension and his sickness prolonged due to lack of financial support. That when the workman recovered from his illness, he reported for work, but he was prevented from reporting for his duties and his services were orally terminated by the employer from 15-10-90 when the workman demanded his wages from the month of May, 1990 which were not paid to him. That the workman applied for loan from his Provident Fund account but his application was rejected because the employer had not deposited the Provident Fund contribution of the employee/workman's share every month. That, since the workman was facing financial crisis, he approached the employer and demanded the wages due to him, but he was meated out with ill treatment. That the workman thereafter, raised an industrial dispute before the Labour Commissioner and the Conciliation proceedings ended in failure. The workman contended that his last drawn salary was Rs. 1500/- p.m. and he was also paid an amount of Rs. 100/- per month towards travelling allowance. The workman further contended that at the time of termination of his services, he was not paid his legal dues and the termination of his services w.e.f. 15-10-90 was illegal and unjustified. The workman stated that he was born on 12-8-1934 and he has already attained superannuation and therefore he was entitled to back wages from 15-10-90 till the date of his superannuation.

3. The employer filed the written statement which is at Exb. 7. The employer contended that the workman was not a "workman" as defined under the provisions of the I. D. Act, 1947. The employer further contended that the reference was incompetent as it was made by the Government of Goa and not by the Central Government, as also that there was no industrial dispute as no demand was made by the workman on the employer for his reinstatement. The employer denied that the services of the workman were terminated as alleged by him and stated that the workman had remained absent from duty for an unreasonable period. The employer denied that the workman was employed in clerical capacity and stated that he was employed in supervisory capacity, exercising duties mainly of managerial nature and was drawing wages in excess of Rs. 1600/- every month. The employer also denied that the workman was required to discharge his duties at the Head Office and stated that he was engaged to discharge duties on the mines of the employer to submit reports and compliance statements concerning the functions of the mines in respect of the workman posted under him and the workman was also required to sanction leave, initiate disciplinary action and discharge similar functions of supervisory nature. The employer denied that the payment of the wages of the workman were delayed at any time. The employer stated that the workman used to take advance amount towards his wages and from the records maintained by the employer it was found that he had received an excess amount of Rs. 20,720.59 n.p. which the employer decided to adjust by deductions from the salary of the workman. The employer denied that the workman was seriously ill as alleged by him, and stated that if the workman was really sick, he ought to have obtained sick leave. The employer stated that in the conciliation proceedings before the Labour Commissioner, the workman was given the offer for joining the duties and was told that in case he joined the duties he would be given full opportunity to explain his unauthorised absence from duties. The employer denied that there was any termination of services of the workman by the employer w.e.f. 15-10-90 and therefore, submitted that the workman was not entitled to any relief.

4. The workman thereafter, filed his Rejoinder which is at Exb. 8. In the Rejoinder, the workman controverted the pleadings of the employer made in the written statement. On the pleadings of the parties, following issues were framed at Exb. 9.

ISSUES

1. Whether party II proves that appropriate Government is the Central Government and hence the reference made by the State Government is not maintainable?

2. Whether party I proves that is a 'Workman' within the meaning of Sec. 2(s) of the I. D. Act, 1947 and his last drawn salary was Rs. 1,500/- per month?

3. Whether party I proves that Party II terminated his services w.e.f. 15-10-90, which is illegal and unjustified?

4. Whether party II proves that the reference is not maintainable for the reasons stated in para 1(c) and 1(d) of the written statement?

5. Whether party I is entitled to any relief?

6. What Award?

After the issues were framed, deposition of the workman was recorded on 25-8-95. However, he was not cross examined as the employer nor its Advocate remained present on that day. Thereafter, case was fixed for employer's evidence on 8-9-95. On this date also, neither the employer nor its Advocate appeared and hence the evidence of the employer was closed.

5. My findings on the issues are as under:-

Issue No. 1 — In the Negative
Issue No. 2 — In the Affirmative
Issue No. 3 — In the Affirmative
Issue No. 4 — In the Negative
Issue No. 5 — As per para 10 below
Issue No. 6 — As per order below

REASONS

6. *Issue No. 1:-* The employer in the written statement had taken the defence that the workman was employed at the Mines belonging to the employer and that he was never posted at the head Office of the Employer. The employer, therefore, contended that the appropriate Government to refer the dispute was the Central Government and not the Government of Goa. The burden to prove this was cast on the employer. However, no evidence was led by the employer inspite of the opportunity given. The workman led evidence by examining himself and his deposition has gone unchallenged as the employer or their Advocate remained absent when the deposition of the workman was recorded. The workman in his deposition has stated that he was attached to the Head Office of the employer since the time he was employed on 1-1-1974 and he was working as the Head Office Representative. He has also stated that he was carrying out the instructions given to him by the Manager or the employer. In this respect, he has produced the letters addressed to him from time to time which are at Exb.W-1, Exb. W-2 (colly), Exb. W-3 (colly); Exb. W-4 (colly); Exb. W-5; Exb. W-6 (colly); Exb. W-7 (colly). I have gone through the said letters. In the said letters, the workman is described as the Head Office Representative which lends support to the contention of the workman that he was working in the Head Office. the said letters also indicate that instructions were being given to the workman from time to time to carry out certain work. As I have said, the statement of the workman as well as the documents produced by him have gone unchallenged. There is no evidence from the employer to show that the workman was employed at the mines. Sec. 10(1) of the I. D. Act, 1947 states that the dispute is to be referred by the appropriate Government whenever it is of the opinion that any industrial dispute exists or is apprehended. The proviso to the said section states that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal as the case may be, constituted by the State Government. "Appropriate Goverment' is defined under Sec. 2(a) of the I. D. Act, 1947, and it states that in relation to any industrial dispute concerning a mine, the Central Government is the appropriate Government. The question whether the Head office of a concern carrying on the business of mining operations is a mine and whether the dispute between the workmen employed at the Head Office and the Management could be referred for adjudication by the State Government came up before the Supreme Court in the case of Serajuddin and Company v/s. Their workmen, reported in 1962 I LLJ 450. In the said case, the company was engaged in the business of carrying on mining operations in the State of Orissa and had the Head office at Calcutta. Certain dispute arose between the workmen employed at the Head Office and Management in regard to certain service conditions. The State Government of West Bengal referred the dispute for adjudication to the Industrial Tribunal. The company challenged the validity of the reference on the ground that the appropriate Govt. to make the reference was the Central Govt. and not the State Government. The Tribunal came to the conclusion that the reference made by the State Government of West Bengal was valid. This finding was challenged by the company before the Supreme Court in the above case. The Supreme Court after analysing Sec. 2(a) (1) of the I. D. Act which defines "Appropriate Govt." and Sec. 2(1b) of the same Act which defines "Mine" held that an industrial dispute between the employees engaged in the Head Office at Calcutta and the employer is not an industrial dispute concerning a mine. It held that the head office is not a mine and so an industrial dispute raised by the employees engaged in the Head Office is not an industrial dispute concerning a mine. The Supreme Court, therefore, held that reference of the dispute made by the State Government of West Bengal was valid, being the appropriate Government. In the present case, the letters produced by the workman at Exb. W-1, W-2(colly) and W-3(colly) clearly shows that the workman was employed at the Head Office and not at the Mines. The employer has not produced any evidence to show that the workman was employed at the mines. Therefore, the employer has failed to prove that the appropriate Government is the Central Government and that, therefore, the reference made by the State Government of Goa is not maintainable. I, therefore held that the reference made by the Govt. of Goa is maintainable and hence I answer the Issue No. 1 in the negative.

Issue No. 2:- The employer has contended that the workman is not a "workman" as defined under Sec. 2(s) of the I. D. Act, 1947 as he was employed in supervisory capacity, was exercising duties mainly of managerial nature and was drawing wages more than Rs. 1600/- p.m. The contention of the workman is that he was employed as a Head Office representative. He denied that he was employed in supervisory capacity or was exercising duties mainly of managerial nature. He contended that his last salary was Rs. 1500/- p.m. Section 2(s) defines "workman" as follows:

"Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical or supervisory work for Reward or hire, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), of the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employer, of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity;

(iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the

office or by reason of the power vested in him, functions mainly of a managerial nature.

From the above definition, it can be seen that a person is taken out of the definition of workman if he is employed in a supervisory capacity and draws wages exceeding Rs. 1600/- p. m. or exercise functions mainly of a managerial nature. In the present case, only the workman has led evidence by examining himself and he has produced some documents in support of his case. The employer has not led any evidence at all nor the workman has been cross examined. Therefore, the evidence of the workman has gone unchallenged. The contention of the workman that he was employed as a Head office representative and not in supervisory category is proved by the letters produced by the workman at Exb. W-2 and W-3 (Colly). The said letters are addressed to the workman by the Manager of the employer referring to him as the Head Office Representative. None of the letters produced by the workman indicate that the workman was employed in supervisory capacity or that he was exercising the functions mainly of managerial nature. The workman has contended that he was required to carry out the work as per the instructions given to him from time, which is proved by the letters, produced at Exbs. W-1, W-2(colly), W-3(colly), W-4(colly); W-5(colly) and W-6(colly) and W-7(colly). No evidence has been led by the employer as regards the nature of the duties performed by the workman to support its contention that he was employed in supervisory capacity or was exercising duties mainly of managerial nature. To decide whether a person is a "workman" or not, the nature of the duties performed by that person is very relevant. In the absence of any evidence to this effect, it cannot be held that the workman was employed in supervisory capacity or that he was performing duties of managerial nature. Since these contentions were raised by the employer, the burden was on the employer to prove the same. The employer had also taken the stand that the workman used to sanction leave and initiate disciplinary action. However, there is absolutely no evidence to this effect. Also, it was the contention of the employer that the workman was drawing more than Rs. 1600/- p.m. as wages. However, there is no evidence from the employer to this effect also. On the other hand, the workman has produced the order dated 28th July, 1992 at Exb. W-8 (colly) passed by the Authority under the payment of Wages Act, 1936 in Civil case No.CLE/2(PWA-9)/91/3099 wherein it has been mentioned that in the said case the workman had claimed amount of wages at the rate of Rs. 1500/- per month towards wages for May, 1990 to October, 1990. From the said order, it can be seen that the employer never disputed that the wages of the workman were not Rs. 1500/- per month. It is also pertinent to note that the employer never came out with a case as to what was the amount of wage that was drawn by the workman per month. The employer simply stated in the written statement that the workman was drawing wages in excess of Rs. 1600/- p.m. In the circumstances, I hold that the workman has succeeded in proving that he is a "workman" as defined under Section 2(s) of the I.D. Act, 1947, and his last drawn salary was Rs. 1500/-p.m. I therefore, answer the issue No. 2 in the affirmative.

8. *Isssue No. 3:-* The workman has contended that from the year 1981, the employer was not paying to him his wages regularly and he was paid some amount intermittently as advance towards his salary which was varying between Rs. 200/- to Rs. 500/-. The workman's case is that he was not paid salary for about 6 months and therefore, he was in great financial difficulties and also lot of hardships was being caused to him. The workman's further case is that on several occasions he had approached the employer with a request to pay to him dues and on each occasion he was told that his dues would be cleared, and the last time when he approached the employer on 15-10-90 he was told that his services were no more required and hence he should stop working w.e.f. 15-10-90. The deposition of the workman in respect of the above facts has gone unchallenged. The employer has taken the stand that the workman was given the offer that he should join the duties and that after he joined the duties he would be given the opportunity to explain his absentism from service. However, there is no evidence on record to show that such an offer was given to the workman and that he refused the said offer. The employer in the written statement has not disputed that the workman was not in the employment from 15-10-90. The employer's case is that the workman has remained absent unauthorisedly without any reason. It is also not disputed by the employer that the workman was in the employment from 1-1-74 as contended by the workman. The contention of the employer that the workman unauthorisedly remained absent and also did not accept the offer of joining the duties has not been proved as no evidence has been led by the employer in this case. On the other hand, the statement of the workman in his deposition that the employer told him to stop working w.e.f. 15-10-90 as his services were no more required has gone undisputed. No challenge is thrown to this statement of the workman. Even if the contention of the employer that the workman absented himself unauthorisedly is taken as correct, then the employer ought to have issued chargesheet to the workman for having committed misconduct and terminated his services after holding proper inquiry. In the case of Gangaram K. Medekar V/s Zenith Safe Mfg. Co.& Others; reported in 1996(1) CLR 172, the employer had taken the defence that the services of the workman were not terminated but he had voluntarily left the services as he was not interested in employment. The Bombay High Court held that the employer unilaterally cannot say that the workman was not interested in employment. and for this reason a domestic enquiry is required to be held. The High Court further held that even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service and if the Labour Court finds that there is no evidence led by the employer and the Court finds that it is word against word, then the benefit goes to the workman and not to the employer. The decision of the Bombay High Court supports the case of the workman. The contention of the workman is that when he went to report for work on 15-10-90, Mr. Vishal Bandekar the proprietor of the Employer/Party II told him that his services were no more required and that he should stop working from that day i.e. from 15-10-90. On the other hand, the employer in the written statement has pleaded that the workman absented himself from services unauthorisedly and denied that the services of the workman were terminated orally from 15-10-90. As I have said earlier, the employer has not led any evidence to prove that the workman absented himself from service unauthorisedly. No domestic enquiry whatsoever was held by the employer against the workman. There is also no evidence to prove that the employer had given offer to the workman to join the services. I have no reason to disbelieve the statement of the workman which is made on oath. In the facts of the case and in view of the law laid down by the Bombay High Court in the case of Gangaram Medekar (Supra) I hold that the workman has succeeded in proving that the employer terminated his services w.e.f. 15-10-90 and since the termination of the services is without holding any domestic enquiry, the same is illegal and unjustified. In the circumstances, I answer the issue No. 3 in affirmative.

9. *Issue No. 4:-* In the written statement filed by the employer at para 1 (c), the employer has raised the objection that the workman never made any demand on the employer for reinstatement and in the absence of such a demand there is no industrial dispute which is existing, and hence the reference is not contended. At para 1 (d) the employer has raised another objection that in the conciliation proceedings, it was clarified by the employer that the services of the workman were not terminated but he had absented from duty for an unreasonable period and that the workman was offered to join the duties. The contention of the employer is that since the employer had not admitted that the services of the workman were terminated, the reference in the manner framed by the Government is not competent. As regards the first objection of the employer that no demand for reinstatement was raised before the employer and therefore, there is no industrial dispute existing, I do not agree with this contention of the employer.

It is true that an industrial dispute arises only when there is a demand made by the workman and the refusal of the same by the employer. However, this demand may be expressly made or implied by. What is relevant is whether the employer is aware of the nature of demand made by the workman and the employer has refused the same. The Himachal Pradesh High Court in the case of M/s Village Papers Pvt. Ltd., v/s State of Himachal Pradesh reported in 1993 Lab I. C. 99 after considering the various decisions of the Supreme Court and the High Courts in para 1 of its Judgment held that (1) Mere demand made to the Government cannot become an industrial dispute without it being raised by the workman with their employer (2) If such a demand is made to the Govt. it can be forwarded to the Management and if rejected, becomes an industrial dispute (3) Though it is apparent that for a dispute to exist there must be a demand by the workman on the employer, this demand need not be in writing, unless the matter pertains to a public utility service, in view of the provisions of Sec. 22 of the Industrial Disputes Act, 1947 (4) . The demand need not be sent directly to the employer; not is it essential for it to be made expressly; it can be even implied or constructive e. g. by way of filing appeal or refusal of an opportunity to work when demanded by the workmen. A demand can be made through the conciliation officer, who can forward it to the management and seek its reaction. If the reaction is negative, and not forthcoming and the parties remain at logger heads, a dispute exist and a reference can be made. I am in respectful agreement with this decision of the Himachal Pradesh High Court. In the present case, the workman has produced the failure report Exb. W-9 submitted by the Asstt. Labour Commissioner to the Government. The said report shows that the workman had made the demand for his reinstatement in service and the employer was communicated about this demand of the workman. In the failure report it is stated that number of Joint discussions were held between the parties and during the discussions the workman had stated that he had been forcibly kept out of service w.e.f. 15-10-90 and he demanded that he should be reinstated with full back wages and continuity in services. The report further states that both the parties filed statements and counter statements. It is also mentioned in the report that as regards the termination of services the employer vide reply dated 25-9-91 stated that the workman was again and again informed to join duties and he failed to do so. The failure report is not challenged by the employer. The facts mentioned in the report sufficiently prove that there was a demand made by the workman for his reinstatement on the ground that his services were illegally terminated by the employer, which demand was communicated to the employer and who denied that the services were terminated. In the circumstances, I hold that industrial dispute did exist when the reference was made by the Government, and hence the reference is competent.

As regards the other objection, it is the contention of the employer that it was clarified in the conciliation proceedings that the services of the workman were not terminated but he had absented himself for an unauthorised period, and the workman was offered to join the duties. The contention of the employer is that though the employer had not admitted that the services of the workman were terminated and had stated that the workman had absented himself unauthorisedly, the reference is as regards the termination of the service of the workman and therefore, the reference as is framed is not maintainable. The contention of the employer is without any substance. The workman has stated that after the termination of his services, he made a complaint to the Labour Commissioner and upon his complaint conciliation proceedings were held. A similar issue was involved before the High Court of Bombay in the case of Sheshrao Bhaduji Hatwar v/s Presiding Officer, First Labour Court, reported in 1990 II CLR 726, the Bombay High Court in paragraph 5 of its judgment held as follows:

The definition of 'industrial dispute' is itself vide enough to include any dispute of difference "connected with the employment of non employment". There is a long line of decisions of the Supreme Court taking a view that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The obvious reasons for this approach is not only the width of language used in the definition of "industrial dispute", Sections 2-A and 10 of the I. D. Act but also the object behind the Labour legislation. The industrial peace has to be achieved as early as possible and the battle generally between unequals. Atleast one party, namely, the worker cannot afford to fight continuous along drawn battle against the employer and hence technical, formal and procedural points have almost no place in such disputes. Indeed the duty of Courts and Tribunals is to discourage ingenuity on such points and to adjudicate the controversy on merits. Many times the reference is cryptic and vague and is not properly worded. Sometimes it is not even possible to mention therein the defence of the other party. In such cases it is the duty of the adjudicating authority to examine the pleadings, documents etc. and to locate the exact nature of dispute.

The Bombay High Court in paragraph 7 of its Judgment further held as follows:-

"Legal position is thus clear that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may content the defence or may not. If points of difference are discernable from the material before the Court of Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference."

The High Court in paragraph 9 of its judgment also referred to the decision of the Goa Bench of the same High Court in the case of Sitaram Shirodkar v/s the Administrator, Govt. of Goa, reported in 1984 Mah. L. J. 566, wherein, it was held as follows:

"The Tribunal could not travel beyond the reference and decide the question whether the Respondent No. 4 had abandoned his services. That the Petitioner had terminated the services of the Respondent No. 4 was an act fastened on the petitioner by this reference and the only question left open for decision was whether the Termination was legal and proper".

The High Court observed that it seems that the attention of the Goa Bench was not drawn to various Supreme Court decisions on the point and thus the decision of the Goa Bench in Sitaram Shirodkar's case (Supra) is per incurium. Therefore, in view of the decision of the Bombay High Court in the case of Sheshrao Hatwar (Supra) the above objection of the employer cannot be substained. In the circumstances, I hold that the employer has failed to prove that the reference is not maintainable and hence I answer the issue No. 4 in the negative.

10. *Issue No. 5:-* While deciding the issue No. 3, I have held that the termination of the services of the workman by the employer w.e.f. 15-10-90 is illegal and unjustified. This being the case in the normal course, the workman would have been entitled to reinstatement with full back wages and continuity in service. However, the workman himself has stated in his deposition that he was born on 12-8-1934 and as per the rules he reached superannuation on 12-8-92. This statement of the workman has gone unchallenged. The employer has not led any evidence to the contrary. In the circumstances, the relief of reinstatement cannot be granted to the workman. But since the employer terminated the services of the workman illegally and without any justification, the workman is liable to be deemed in employment from 15-10-90 till the time he reached superannuation on 12-8-92. The workman, therefore, is entitled to full back wages from the date of termination of his services till the date of his superannuation i.e. from 15-10-90 to 12-8-92. The workman has deposed that he was drawing Rs. 1500/- p.m. by way of salary at the time of termination of his

services, and that in addition to that he was being paid Rs. 100/- p.m. towards allowances. The employer has not led any evidence to the contrary.

In the circumstances, I pass the following order:

ORDER

It is hereby held that the action of the management of employer M/s V. N. Bandekar, Panaji, in terminating the services of their workman Shri Shantaram Parab w.e.f. 15-10-90 is illegal and unjustified. The employer M/s V. N. Bandekar is directed to pay to the workman Shri Shantaram P. Parab full back wages from the date of termination of his services till the date of his superannuation, i.e. from 15-10-90 to 12-8-92.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI)
Presiding Officer
Indusstrial Tribunal

Order

No. CL/Pub-Awards/98/241

The following Award dated 29-12-1998 in Reference No. IT/16/98 given by the Industrial Tribunal, Panaji Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/16/98

Shri Shiva R. Gaonkar,
House No. 52, Kamtibat,
Mugalem, Sanguem, Goa. — Workman/Party I
V/s
Shri Minguelino D'Costa,
Agriculturist,
Sanguem-Goa. — Employer/Party II

Workman - Party I represented by Adv. P. B. Devari.
Employer - Party II - Exparte.

Panaji, Dated: 29-12-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 5th March, 1998 bearing No. IRM/CON/BG/(52)/94/97/7667 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the employer Shri Minguelino D'Costa, Sanguem, in terminating the services of Shri Shiva R. Gaonkar, with effect from 1-7-1994 is legal and justified?"

(2) "If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No.IT/ /16/98 and registered A/D notice was issued to the parties who were duly served with the said notice. In pursuance to the said notice the Workman/Party I (for short "Workman") appeared and was represented by Adv. Shri P. B. Devari. The employer-Party II (for short, "Employer") though duly served with the notice did not appear and hence the case was proceeded ex-parte against the employer on 10-8-98. The workman filed his statement of claim which is at Exb.3. The facts of the case in brief as pleaded by the workman are that he was working with the employer since the year 1972. The employer is an Agriculturist & Forest and Transport contractors and also carries on the business of crusher employing more than 50 workers. That the workman was employed to look after the business activities of the employer since the year 1972 and he worked continuously with him without any break till 30-6-94. That on 1-7-94 when he reported for work he was not allowed by the employer to resume his duties and his services were terminated orally. That before termination of his service no enquiry was conducted against him nor his legal dues were paid. That at the time of termination of his service his wages were Rs. 1000/- per month. That since the date of termination of his service he is unemployed as a result of which undue hardship is being caused to him. The workman contended that termination of his services by the employer is illegal, unjustified and bad in law. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity of service.

3. The present case was proceeded ex-parte against the employer on 10-8-98 as inspite of the opportunities given none appeared on his behalf, and thereafter ex-parte evidence of the workman was recorded. Besides examining himself, the workman examined one witness in support of his case. The workman in his deposition stated that the employer carries on the business of agriculture, forest contract, transport contract and also owns a crusher, and employs about 40 to 50 workers for the prupose of his business of crushing. He stated that he was working with the employer as a supervisor since the year 1972 and that his last drawn wages were Rs. 1200/- p.m. He stated that the employer terminated his services from 1-7-94 and at the time of termination of his service he was not given any notice nor was paid notice pay or any compensation. He produced the voucher showing the salary paid to him by the employer for the month of January, 1994 as well as the advances from time to time. He also produced the xerox copy of his deposition recorded in the Civil Suit No.71/87 which suit was filed by the employer against his brother Shri Shrill Ellay D'Costa in the Court of Civil Judge Senior Division, Sanguem. The same was taken on record and marked as Exb.A-2 subject to the production of the certified copy of the deposition. Subsequently the workman produced the certified copy along with an application dated 13-10-98 and the said certified copy was taken on record and marked as Exb.A-3. He stated in his deposition that he was a witness for the employer in the said suit. The certified copy of the deposition shows that the workman was examined by the employer as his witness and he had stated in his deposition, that is, in his examination in chief itself, that he was working the employer as his supervisor, since 18 years. This deposition of the workman was recorded on 3-3-92. Therefore there is an admission from the employer himself in the year 1992 that the workman was working with him as a supervisor for the past 18 years. The workman has also produced a voucher Exb.W-1. This voucher according to him shows the salary paid to him for the month of January 1994 and also the advances paid to him from time to time. The voucher Exb.W-1 mentions the salary of the employer as Rs. 1200/- p. m. It is little difficult to rely on this voucher because though the voucher is printed in the name of the employer, it does not carry the signature of any person nor there is any other evidence

on the same to show that it was issued by the employer. Also, the workman in his statement of claim has stated that his last drawn wages were Rs.1000/- p.m. But in the voucher the wages of the workman are shown as Rs.1200/- p.m. However, the certified copy of the deposition of the workman recorded in the Civil Suit No. 71/87 is itself enough to prove that the workman was employed with the employer as a supervisor as he was examined as his witness by the employer and the statement that he was working the employer as a supervisor since last 18 years was made by the workman in his examination in chief itself. Besides, the employer was served with the notice in this case. However, the employer did not participate in the proceedings inspite of the opportunities given and allowed the case to proceed ex-parte. Consequently the deposition of the workman as well as that of his witness Shri Khushali Usgaonkar has gone unchallenged. The said witness has stated that he knows the workman as well as the employer and that the employer is carrying on the business of agriculture, forest contract, transport contract and crushing. He has stated that the employer employs about 40 to 45 workers for the purpose of this business of crushing and that the workman was working with him as a supervisor. The evidence of this witness supports the case of the workman. As mentioned earlier there is no challenge to the statement of this witness from the employer, nor there is any contrary evidence on record to show that the wages of the workman were more than Rs. 1600/- p.m. at the time of termination of his service. Therefore the evidence discussed above establishes that the workman was employed with the employer as a supervisor and his last drawn wages were Rs. 1000/- p.m. as per the admission made by the workman in his statement of claim.

4. It is the case of the workman that his services were terminated by the employer from 1-7-94. It is further his case that termination of his service is illegal because he was not given one month's notice or notice pay nor he was paid his legal dues or compensation at the time of termination of his service. It is to be seen whether the termination amounts to "retrenchment". Sec.2(oo) or the I.D. Act, 1947 define "retrenchment". As per the said definition retrenchment means termination of service of a workman otherwise than as a matter of punishment inflicted by way of disciplinary action. In the present case the services of the workman were terminated without giving any reasons. It was not as a matter of punishment inflicted by way of disciplinary action. His case also does not fall within the exceptions laid down under Sec.2(oo) of the Industrial Disputes Act, 1947, which are (1) voluntary retirement of the workman or (ii) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or (iii) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, or (iv) Termination of the service of a workman on the ground of continued ill-health. Therefore, the termination of the service of the workman amounts to retrenchment.

5. The procedure for retrenching the services of a workman is laid down under sec. 25F of the Industrial Disputes Act, 1947. As per the said provision, the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25B(2) of the I.D. Act, 1947 defines "continuous service". As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months proceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case the workman obviously was not employed below ground in a mine. He has stated in his deposition that he was employed as a supervisor in the year 1972 and his services were terminated on 1-7-94. Therefore the workman had worked with the employer for more than 240 days prior to 1-7-94. and hence the provisions of sec.25F of the I.D. Act, 1947 became applicable to him. In the case of M/s Avon Services Production Agency Pvt. Ltd., V/s Industrial Tribunal Haryana and others reported in AIR 1979 SC 170 the Supreme Court has held that giving of notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. In the present case the workman has stated that he was not given one month's notice or notice pay nor he was paid his legal dues or compensation. There is no evidence on record which is contrary to this. This being the case there is no compliance of the provisions of Sec.25F of the Industrial Disputes Act, 1957 from the employer and hence the termination becomes illegal and invalid. In the circumstances I hold that the termination of the services of the workman by the employer from 1-7-1994 is illegal and unjustified.

6. Having held that the termination of service of the workman is illegal and unjustified, what remains for consideration is as to what relief should be granted to the workman. In the normal course, the workman is entitled to reinstatement in service with full back wages, unless on account of some reasons the workman should not be awarded reinstatement or full back wages. In the present case I do not find any reason to deviate from this normal rule. The workman in his deposition has stated that he is unemployed from the date of termination of his service. His witness Shri Khushali Usgaonkar has corroborated him in this respect. There is also no evidence on record to the contrary. It has been held by the Supreme Court in the case of State Bank of India V/s Sundera Money, reported in AIR 1976 SC 1111 that reinstatement is the necessary relief in case of violation of the provisions of sec. 25F of the Industrial Disputes Act, 1947. In the present case the services of the workman were terminated in violation of the provisions of sec. 25F of the Industrial Disputes Act, 1947. There is no evidence that the workman is gainfully employed. This being the case, the relief of reinstatement in service with full back wages cannot be denied to the workman. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the employer Shri Minguelino D'Costa, Sanguem, in terminating the services of the workman Shri Shiva R. Gaonkar, with effect from 1-7-1994 is illegal and unjustified. Shri Shiva R. Gaonkar is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AGIT J. AGNI)
Presiding Officer
Industrial Tribunal

Order

No. CL/Pub - Awards/98/10426

The following award dated 3-7-1998 in reference No. IT/31/90 given by the Industrial Tribunal, Panaji - Goa, is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 31st August, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/31/90

Shri Pundalik Morajkar,
H. No. 59, Ward No. 13,
Malbhat, Margao Goa. — Workman/Party I

V/s

M/s Kadamba Transport Corporation Ltd.,
East Wing, Bus Terminus,
Panaji Goa. — Employer/Party II

Workman/Party I represented by Shri K. V. Nadkarni.
Employer/Party II represented by Adv. Shri C. J. Mane.

Dated: 3-7-98.

AWARD

In exercise of the powers conferred by clause (d) of section 1 of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order bearing No. 28/32/90-LAB dated July 18, 1990 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Pundalik N. Morajkar, Driver, w.e.f. 15-5-1987 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/31/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "workman") filed its statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (For short "Employer") as driver from the year 1984 and he rendered sincere and uninterrupted service to the employer till the date of termination of his service on 15-5-1987. That he was sick and therefore could not attend his duties from 28-2-87. That he was under the treatment of ESI doctor Shri Godinho from Margao and he had issued to him certificates of sickness dated 7-3-87 and 13-3-87 to be submitted to the employer and he had also issued a letter dated 3-3-87 to the Hospicio Hospital at Margao for his further treatment, and as such, he was under treatmeht in the said hospital. That he was also under the treatment of a private doctor by name Shri Karangate who issued to him the fitness certificate dated 24-6-87. That after recovering from sickness and upon obtaining fitness certificate from the hospital, he approached the employer with a request to allow him to report for work but he was told that his services were terminated from 15-5-87 and that a letter of termination of service has been already sent to his residential address. That thereafter, the workman by letter dated 24-6-87 requested the management to take him back in service and justified his absence which was on account of his sickness, and also submitted the certificates issued by the ESI doctor and the fitness certificate issued by the Hospicio hospital in support of proof thereof, but the management refused to take him back in service. That on receipt of the letter of termination of service, he made several representations to the management and also personally met the Personal Officer and the Managing Director, but they refused to take him back in service. That thereafter, he raised an industrial dispute on 6-9-87 before the Dy. Labour Commissioner, Margao who held the concilation proceedings and on failure of the conciliation proceedings, the failure report was submitted to the Government by him. The workman contended that the termination of his service is illegal and unjustified as his absence was due to his sickness and he had submitted the necessary medical certificates issued by the doctors. The workman therefore claimed that he is entitled to be reinstated in service with full back wages.

3. The employer filed the written statement which is at Exb. 3. The employer filed the written statement which is at Exb. 3. The employer admitted that the workman was in employment from 20-4-84 and stated that his name was deleted from the muster roll due to long absentism vide letter dated 15-5-87 after giving due notice to him dated 1-4-87 asking him to report for duty. The employer stated that the name of the workman was deleted as per the provisions of the certified standing order of the employer. The employer denied that the workman was sick and also denied that he produced any certificate from the ESI doctor or any private doctor. The employer stated that the workman preferred to stay out of employment without any intimation or information to the employer. The employer admitted that the workman raised industrial dispute before the Dy. Labour Commissioner, Margao and stated that in the course of the conciliation proceedings, the workman was offered reinstatement in service but as a fresh driver, which offer was refused by the workman on the ground that he should be reinstated with full back wages and continuity in service. the employer denied that the termination of service of the workman is illegal and unjustified. The employer stated that the services of the workman were legally terminated and stated that therefore, he is not entitled to any relief as claimed by him. Alongwith the written statement, the employer also filed an application at Exb. 4 stating that without prejudice to the contentions raised in the written statement, the employer agrees provisionally to reinstate the workman pending the disposal of the case and prayed that necessary directions be issued.

4. The workman thereafter filed rejoinder which is at Exb. 7. In the said rejoinder, the workman accepted the offer of the employer and stated that he was agreeable to join the duties pending the disposal of the case without prejudice to the rights and contention raised by him in the statement of claim. Subsequently the workman filed an application dated 20-5-91 stating that as per the order of this Tribunal, the employer had reinstated the workman by order dated 4-5-91 and also produced the xerox copy of the said order.

5. Thereafter, on the pleadings of the parties following issues were framed at Exb. 8.

1. Does workman prove that he was sick hence was unable to report to his duties?

2. If yes, does he prove that the order of termination of his services is illegal and unjust?

3. If yes, is workman entitled to any relief?

4. What Award or order ?

6. My findings on the issues are as follows:-

Issue No. 1:- In the affirmative.
Issue No. 2:- In the affirmative.
Issue No. 3:- As per para 16 below.
Issue No. 4:- As per order below.

REASONS

7. *Issue No. 1:-* Shri K. V. Nadkarni, representing the workman submitted that the workman has produced the sickness certificates Exb. 12 colly issued by the ESI doctor in support of his case that the was sick from 28-2-87 and continued to be sick when his services were terminated on 15-5-87. He submitted that the workman has also produced a certificate Exb. 14 from Dr. Kharangate to the effect that

the workman was under his treatment and that he was advised rest from 13-3-87 to 23-6-87. He also referred to the ESI card and the OPD card Exb. 13 colly and submitted that the said cards show that the workman was referred to the Hospicio Hospital, Margao for treatment and he was declared fit for resuming his duties from 20-6-87. Shr Nadkarni submitted that the workman has led sufficient evidence to proper that he could not report for duties due to his sickness and for which he was under medical treatment. Adv. Shri Mane, the learned counsel for the employer on the other hand submitted that the workman has failed to prove his sickness as he did not examine the doctors namely Dr. Kharangate and Dr. Nagvenkar whose certificates are produced by the workman. He submitted that the workman had cited their names as witnesses but did not examine them and consequently, his sickness stands not proved. He submitted that once the sickness was not proved it cannot be said that the workman could not report for his duties on account of his sickness.

8. It is an admitted fact that the workman remained absent from duty from 28-2-87. The contention of the workman is that he could not report for duties on account of his sickness and that he was under treatment from ESI doctor, Hospicio Hospital and the private doctors and that he was advised rest. In support of his this contention the workman has examined only himself and has produced the documents namely, the sickness certificate issued by the ESI doctor Exb. 12 colly, the certificate issued by Dr. Kharangate Exb.14 and the OPD card of Hospicio Margao Exb.13 colly. All these certificates and the OPD card do prove that the workman was sick from 28-2-87 and he was referred to Hospicio Hospital, Margao. The certificate issued by Dr. Kharangate proves that the workman was under his treatment and he was advised rest from 13-3-87 to 26-5-87. The ESI card produced at Exb. 13 colly states that the workman was fit to resume duties from 20-5-87. Adv. Shri Mane, the learned counsel for the employer has submitted that the sickness of the workman is not proved because he did not examine Dr. Kharangate and Dr. Narvenkar who had issued the certificates. I do not agree with this submission of Adv. Shri Mane. Merely because the above said doctors are not examined, it does not mean that the sickness of the workman is not proved. The question would have been different if no certificate nor any documentary evidence was produced by the workman in the course of his evidence. In the present case, the workman produced the certificates issued by the doctors as also the ESI card and the OPD card of Hospicio Hospital, Margao in the course of his evidence. In the cross-examination, no suggestion was put to him that he was not sick nor the certificates and other documents produced by him were challenged. Since neither the sickness of the workman was challenged nor the documents produced by him in support of his sickness were disputed, there was no reason for the workman to examine the doctors who had issued the certificates. The ESI card Exb. 13 colly states that the workman was fit to resume duties from 20-6-87. I am therefore, of the view that the workman has succeeded in proving that he was sick and having been advised rest he was not able to report for his duties. I therefore answer the issue No. 1 in the affirmative.

9. *Issue No. 2 :-* The contention of the workman is that termination of his services by the employer w.e.f. 15-5-87 is illegal and unjustified. Shri K. V. Nadkarni, representing the workman submitted that the termination of the services of the workman is on account of the continuous of the workman and it is in terms of the provisions of the certified standing orders of the employer which states that if any workman remains absent without intimation or prior permission for a period exceeding 30 days, he shall be deemed to have resigned from service and the employer is entitled to consider such workman having voluntarily resigned from the job, as can be seen from the letter dated 15-5-87 Exb. 11. He submitted that before termination of service, no chargesheet was issued to the workman nor any domestic enquiry was held. He submitted that it is a settled law that in case of abandonment of service, the employer cannot terminate the services of the workman without holding domestic enquiry and proving the same in the enquiry, in support of his this submission, he relied upon the decision of the Bombay High Court (1) in the case of Gangaram Madekar V/s Zenith Safe Mfg. Co. & Others reported in 1996 I CLR 172, (2) in the case of Riaz Ahmed of Bombay V/s Munir Ismail Mohammed of Bombay & Others reported in 1991 II CLR 580; (3) in the case of Sripad Vishram Angre V/s Phoenix Mills Ltd. & Others reported in 1993 II CLR 518; (4) in the case of International Airport authority of India V/s V. M. Sukhlingam & another reported in 1993 II CLR 521, the decision of the Punjab and Haryana High Court in the case of the management of Modella Woolens Ltd. V/s Presiding Officer, Labour Court, U. T. Chandigarh and another reported in 1993 II CLR 804; the decision of the Delhi High Court in the case of Rahul Butalia V/s State Bank of India reported in 1995 I CLR 742 and the decision of the Supreme Court in the case of Makhan Singh V/s Narainpura Co-op Agricultural Service Society Ltd. and another reported in 1984-87 SCLJ 691. He submitted that the employer has violated the provisions of Sec.25-F of the I. D. Act, 1947 by not giving him notice nor paying notice pay and retrenchment compensation and as such termination of services of the workman is illegal. In this respect, he relied upon the decisions of the Bombay High Court (1) in the case of Kamlakar Ramchandra Mule V/s R. A. Gadekar & Others repoted in 1991 II CLR 584 and (2) in the case of Kala Silk Factory V/s Phankoo Bakas Yadav and others reported in 1991 II CLR 888 and that of the Supreme Court in the case of The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh & Others reported in 1990 EMPLR Vol.6 page 457 and in the case of Gammon India Ltd. V/s Niranjan Das reported in 1984 (1) SCC at page 509. He further submitted that the Supreme Court in the case of D. K. Yadav V/s J. M. A. Industries reported in 1993 II CLR 116 has held that the termination of the services of a workman as per standing order for remaining absent without leave is also retrenchment and non compliance of Sec.25-F renders termination void and illegal. Shri Nadkarni, representing the workman also relied upon the decision of the Punjab and Haryana High Court in the case of Roop Narain Shukla V/s The Learned Presiding Officer, Industrial Tribunal, Haryana, Faridabad and other reported in 1997 II CLR 279 on the point that termination of service of a workman on the ground of absence from duty for a specific period as per standing orders amounts to retrenchment and that of the Allahabad High Court in the case of U. P. State Textile Corporation Spinning Mills V/s State of U. P. and others reported in 1997 II CLR 621 on the point that termination of services without any enquiry and opportunity of hearing on the basis of absence of duty under standing orders providing for automatic loss of lien is violative of principles of natural justice and such termination is liable to be set aside.

Adv. Shri Mane, the learned counsel for the employer submitted that the workman had remained absent without informing and was also very irregular in attending to his duties. He submitted that the workman was sent notice dated 1-4-87 by registered post asking him to report for duties immediately, but he did not do so. He submitted that the services of the workman were terminated in accordance with the provisions of the Certified Standing Orders which are in fact the terms of Contract governing the employment of the workman. He therefore, submitted that the termination of services of the workman is legal and justified. In support of his contentions he relied upon the decisions of the Supreme Court in the case of National Engineering Industries Ltd. V/s Hanuman reported in 1967 II LLJ 883 and that of the Gauhati High Court in the case of Amarjeet Singh V/s Managing Director NEIT Co. Ltd., reported in 1992 II CLR 984.

10. The letter dated 15-5-87 terminating the services of the workman has been produced at Exb.11. The said letter states that the name of the workman has been deleted from the muster roll with immediate effect because his continuous absence proved that he was no longer interested in the service and has left the service of his own accord. The said letter shows that the services of the workman were terminated by deleting his name from the muster roll in terms of the

certified standing orders of the employer which reads that if any workman remains absent without intimation or prior permission for a period exceeding 30 days, he shall be deemed to have resigned from the services and the employer is entitled to consider such workman as having voluntarily resigned from the job. It is the case of the employer that the workman remained absent without prior permission or information from 6-3-97. The contention of the workman is that he could not report for duties from 28-2-87 because of his sickness. The workman has produced evidence to that effect and while deciding the issue No. 1, I have held that the workman has succeeded in proving that he was sick from 28-2-87 and that he could not report for work because of his sickness. However, this does not mean that the workman could not or need not intimate to the employer about his absence which was due to his sickness. The workman in his cross examination has stated that he had sent medical certificate at the hands of one of the co-workers. However, there is no supporting evidence to this statement. He has not stated as to when the said medical certificate was sent nor he has stated as to which is that medical certificate that was sent by him. The workman did not examine the co-workman through whom he had sent the medical certificate. There is no evidence from the workman to show that the employer was informed by him about his absence. Admitedly, the employer has terminated the services of the workman by invoking the provision of the certified standing order as the workman remained absent intimation or prior permission for a period exceeding 30 days and as per the said provision, it was deemed that the workman had voluntarily resigned from services. It is the contention of the workman that prior to termination of his service by striking out his name from the muster roll, no enquiry was held nor any opportunity of hearing was given to him, thereby violating the principles of natural justice and such, the termination is illegal. The contention of the employer on the other hand is that there is no need to held an enquiry or give an opportunity of hearing as the services of the workman are terminated in terms of clause 24 of the certified standing orders.

11. Clause 24 of the certified standing orders of the employer which is reproduced in the letter of termination dated 15-5-87 Exb.11 reads as follows:

> "If any workman remains absent without intimation or prior permission for a period exceeding 30 days, he shall be deemed to have resigned from the services and the employer is entitled to consider such workman having voluntarily resigned from service".

The employer has relied upon the decision of the Supreme Court in the case of National Engineering Industries Ltd. (Supra) and that of the Gauhati High Court in the case of Amarjeet Singh (Supra). I have gone through both the decisions and I am of the view that the decision in the above cases are not applicable to the present case. In the case of National Engineering Industries Ltd. (Supra) the standing order provided that if a workman remained absent from duty for more than eight days, his services stood terminated. Thus, in that case, there was automatic termination of service and hence no order of termination of service was passed. In the present case, from the clause reproduced hereinabove, it can be seen that there is no such provision of automatic termination of service. The said clause conferred descretion on the employer to consider or not the workman as having voluntarily resigned from services as it states that " the employer is entitled to consider such workman having voluntarily resigned from service". In the case of Amarjeet Singh (Supra) the Gauhati High Court held that the respondent company had not committed any error or illegality in invoking the term of the Petitioner's appointment and thereby terminate his appointment by giving him one month's notice or one month's pay in lieu thereof. In the present case, it is nobody's case that the employer could not invoke clause 24 of the standing orders and terminate services of the workman. The question is whether, before invoking this clause, enquiry ought to have been held or opportunity of hearing ought to have been given. In the case of Amarjeet Singh (Supra), the High Court found that the Petitioner Amarjeet Singh was given opportunity to furnish his explanation with regard to certain allegations made against him and he had submitted his explanation which were duly considered by the respondent company. The High Court held that there was no violation of principles of natural justice. This shows that before terminating the services of an employee on some allegation or on some grounds principles of natural justice demands that opportunity of hearing should be given to him.

12. The workman has relied upon various decisions of the Supreme Court, The Bombay High Court and the other High Courts which have been mentioned by me earlier. The gist of the said decisions is that before terminating the services of a workman on the ground of abandonment of service, an enquiry has to be held, because in the case of abandonment of service, what is relevant is the intention to continue with the service or not. In the present case, the letter of termination of service dated 15-5-87 Exb.11 shows that in terminating the services of the workman, the employer was influenced by the fact that the workman was not interested in service because he had remained absent for more than 30 days without prior permission or intimation. Shri Cuncolienkar, the wirness for the employer has admitted in his cross examination that no enquiry was held. The workman has relied upon the decision of the Allahabad High Court in the case of U. P. State Textile Corporation Spinning Mills (Supra). In the said case, the Allahabad High Court after considering the various decisions of the Supreme Court including the one in the case of D. K. Yadav (Supra) held that termination of services of an employee on the basis of absence from duty under standing orders without any enquiry and opportunity of hearing is violative of the principles of natural justice. In the said case, clause 14 of the certified standing orders provided that if an employee remains absent without leave or without any information or sufficient reason for more than fifteen consecutive days, he will be deemed to have abandoned the employment. The High Court held that the said clause leaves open to the employee to establish sufficient reasons explaining his absence and thus it is implied and inherent in the said clause itself that the termination cannot be automatic. In the case of Rahul Butalia (Supra), the Delhi High Court has held that it is well settled that where service rules make a provision for deemed voluntary abandonment or resignation from service, an opportunity of proper hearing must be afforded to an employee before power under the rules can be invoked. The above decisions of the High Court are in conformity with the decisions of the Supreme Court. In the case of D. P. Yadav (Supra) the services of the appellant Shri D. P. Yadav were terminated by the respondent/ /company by letter dated 12th December, 1980, intimating to him that he willfully absented himself from duty continuously for more than 8 days from 3rd December, 1980 without leave or prior intimation or information or previous permission from the management and therefore, deemed to have left the services of the Company on his own account and lost his lien and the appointment with effect from 3rd December, 1980, as per clause 13(2) (iv) of the certified Standing Orders of the Company. The Tribunal held that the action of the respondent company was in accordance with the certified standing orders and it was not a termination nor retrenchment under the Industrial Disputes Act, 1947. The Supreme Court however held that it is a settled law that the certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. The Supreme Court observed at para 8 of the judgement that the cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially and it is not so much to act judicially but to act fairly, namely the procedure adopted must be just, fair and reasonable in the particular circumstances of the case that is in other words, the application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person. In para 9 of the judgment, the Supreme Court observed that it is the funda-

mental rule of law that no decision must be taken which will effect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. The Supreme Court held that since the appellant Shri D. K. Yadav was not given any opportunity to put forth his case nor any enquiry was held in the matter, there was violation of principles of natural justice. The Supreme Court held that the principles of natural justice must be read into the standing order No. 13 (20) (iv). Consequently, the Award of the Labour Court was set aside and the letter dated 12-12-1980 of the management was also set aside. Same principles have been laid down by the Supreme Court in another case that is in the case of Uptron India Ltd. V/s Shammi Bhan & another reported in 1998 I CLR 1043. In this case, the respondent Shammi Bhan was appointed as an operator (Trainee) in the establishment of the Petitioner on 13-5-80 and on completion of the training, she was absorbed on that post and was subsequently confirmed on 13-7-82. By letter dated 12th April, 1985, the Petitioner Company informed the respondent that her services stood automatically terminated in terms of clause 17 (g) of the certified standing orders. The respondent raised the Industrial dispute and the tribunal by its Award held that the termination of the services of the respondent amounted to retrenchment and since all other legal requirements were not complied with, the termination was bad. The Award was challenged before the Allahabad High Court and the High Court upheld the findings of the Tribunal that the termination amounted to retrenchment and further held while invoking the provisions of clause 17(g) of the certified standing orders, the petitioner company ought to have given an opportunity of hearing to the respondent. The decision of the High Court was challenged before the Supreme Court by the Petitioner Company. Clause 17(g) of the Certified Standing orders of the petitioner company under which the services of the respondent were terminated read as follows:-

"The services of a workman are liable to automatic termination if he overstay on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week."

The Supreme Court in para 15 of the Judgment held that it is a settled law that the services of a permanent employee whether employed by Government or Govt. Company or Govt. instrumentality or statutory Corporations or any other "Authority" within the meaning of Art. 12 cannot be terminated abruptly and arbitrarily either by giving him a month's or three month's notice or pay in lieu thereof or even without notice, not withstanding that there may be a stipulation to that effect either in the contract of service or in the certified standing orders. The Supreme Court therefore, held that the action taken by the Company against the respondent who was a permanent employee was illegal. In para 20 of the Judgment, the Supreme Court held as follows:-

"There is another angle job looking at the problem clause 17(g) which has been extracted above, significantly does not say that the services of a workman who overstays the leave for more than seven days shall stand automatically terminated. What it says is that " the services are liable to automatic termination." This provision therefore, confers a descretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It is obvious that this discretion cannot be exercised or permitted to be exercised capriciously. The descretion has to be based on an objection consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to preceed on leave, why he over stayed the leave; was there any just and reasonable cause for over staying the leave; whether he gave any further application for extension of leave; whether any medical certificate was sent, if he had in the meantime, fallen ill? These are questions which would naturally arise while deciding to terminate the services of the employee for overstaying the leave. Who would answer these questions and who would furnish material to enable the management to decide whether to terminate or not to terminate the services are against questions which have an answer inherent in the provision itself, namely that the employee against whom action on the basis this provision is proposed to be taken must be given an opportunity of hearing. The principles of natural justice, which have to be read into the offending clause, must be complied with and the employee must be informed of the grounds for which action was proposed to be taken against him for over staying the leave."

13. In the present case also, the employer has admitted in the written statement that it is a Government Company incorporated under the Companies Act. It is also an admitted fact that the workman was employed with the employer since the year 1984 as a driver. The workman in his deposition has stated that he was a permanent employee. The employer did not challenge this statement of the workman. Clause 24 of the Certified Standing Orders of the employer does not provide automatic termination. It states that the workman shall be deemed to have resigned from service if he remain absent for more than 30 days without any permission or intimation and the employer is entitled to consider such workman as having voluntarily resigned from service. This means that discretion is given to the employer to consider or not the workman having voluntarily resigned from service. This discretion cannot be exercised capraciously and it is to be exercised after considering all the circumstances and the materials available on record and the workman ought to have been given an opportunity of hearing as held by the Supreme Court in the case of Uptron India Ltd. (Supra). The employer in the written statement has taken the stand that the workman was given a Registered A/D notice dated 1-4-87 asking him to join the duties before terminating his services. However, in the rejoinder filed by the workman, he denied of having received such a letter. In his deposition also, he denied of having received such a letter asking him to join the duties. If such a letter notice was sent to the workman, the employer ought to have produced the A/D card as it is its case that the said letter/notice was sent by registered A/D post. The employer did not do this. Therefore, there is no evidence that the employer had sent to the workman the letter/notice asking him to join the duties before letter of termination was issued. There is also no evidence that the workman was given any opportunity of hearing before issuing the letter dated 15-5-87 Exb.11 deleting the name of the workman from the muster roll thereby terminating his services. No enquiry was also held as admitted by the employer. As per the law laid down by the various High Courts and the Supreme Court in the cases referred above, the employer ought to have held enquiry or given to the workman the opportunity of hearing while terminating his services in terms of clause 24 of the Certified Standing Orders. This act on the part of the employer is therefore in violation of the principles of natural justice and therefore, the termination is bad and illegal.

14. The workman has also contended that termination of his service amounts to retrenchment and since the employer did not comply with Sec. 25-F of the I. D. Act, 1947, the termination is illegal and bad in law. The contention of the employer on the other hand is that the services of the workman are terminated in terms of the provisions of the Certified Standing Orders of the employer and therefore, the question of complying with the provisions of Sec. 25-F of the I. D. Act, 1947 did not arise. Retrenchment has been defined under Sec. 2(oo) of the I. D. Act, 1947 as follows:-

"Retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) Voluntary retirement of the workman; or (b) retire-

ment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contain a stipulation in that behalf; or

(bb) Termination of the services of the workman as a result of non renewal of its contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf concerned therein; or

(c) Termination of the services of a workman on the ground of continued illhealth.

The letter of termination of service dated 15-5-87 is on record at Exb.11. This letter states that the name of the workman has been deleted from the muster roll of the Corporation with immediate effect. Deleting the name from the muster roll in other words means striking off the name from the muster roll. This letter shows that the services of the workman were not terminated as a matter of punishment inflicted by way of disciplinary action. Besides Shri Cuncolienkar, the witness for the employer has stated in his cross examination that the services of the workman were terminated in terms of clause No. 24 of the Certified Standing Orders which states that if a workman remain absent unauthorisedly, for more than 30 days, it is presumed that he has resigned from service on his own and his name is liable to be struck off the muster roll. He also stated in his cross examination that no enquiry was held against the workman.Therefore, it is evident that services of the workman were not terminated by way of disciplinary action but it was presumed that he had resigned from service of his own and hence his name was struck off from the muster roll. The case of the workman also does not fall within the exceptions laid down in Sec.2(oo) of the I. D. Act, 1947. The High Court of Punjab and Haryana in the case of Roop Narayan Shukla (Supra) has held that the termination of employment on the ground of absence from duty for a specific period as per the certified standing order would be retrenchment in terms of Sec.2(oo) of the Industrial Dispute Act. In the said case, the Petitioner Roop Narain Shukla had submitted that since his name was struck off, it was a case of retrenchment and it was submitted on behalf of the respondent company that since the termination of employment was as per standing orders, it amounted to termination as per service contract and therefore, compliance of Sec.25-F of the I. D. Act was not necessary. The Company had advanced the similar arguments as advanced by the employer in the present case. The Punjab High Court however disagreed and held that the termination amounted to retrenchment as stated hereinabove. This decision of the Punjab & Haryana High Court is based on the decision of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. V/s Shambu Nath Mukherji and other reported in 1997 LIC 1695. In that case, the Supreme Court has held that striking off name of a workman from the rolls by the management on the ground of absence for a specific period provided under standing orders amounts to retrenchment within the meaning of sec.2 (oo) of the I. D. Act. In another case, that is in the case of D. K. Yadav (Supra) same issue was involved as in the present case. In that case also, the services of the workman were terminated on the ground that he had absented from duty for more than 8 days without previous permission or prior information or intimation and that therefore, in terms of clause 12(2) (iv) of the Certified Standing Orders, the workman was deemed to have left the services of the company on his own and thus he lost his lien and appointment. The Supreme Court on considering its earlier decisions including the one in the case of Punjab Land Development and Reclamation Corporation Ltd. (Supra) held that the definition of "retrenchment" in Sec.2(oo) is a comprehensive one intended to cover any action of the management to put an end to employment of an employee for any reason whatsoever. Therefore, the above decisions of the Supreme Court and that of the Punjab & Haryana High Court squarely apply to the present case. I therefore hold that the termination of the services of the workman by the employer by deleting his name from the muster roll is "retrenchment" in terms of Sec.2(oo) of the I. D. Act, 1947.

15. Section 25-F of the I. D. Act, 1947 lays down the procedure for retrenchment. As per this provisions, the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec.25 B(2) of the I. D. Act defines continuous service. It states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of workman employed below ground in a mine and 240 days in any case. In the present case, the workman was employed from 20-4-1984 as admitted by the employer in the written statement. He worked with the employer continuously without any break. The services of the workman were terminated with effect from 15-5-87 as can be seen from the letter dated 15-5-87 Exb.11. This being the case, the provisions of Sec.25-F of the I. D. Act, 1947 are applicable to the workman. There is no evidence on record to show that the workman was given one month's notice or was paid wages in lieu of such notice or was paid retrenchment compensation as laid down in Sec. 25-F of the I. D. Act. Infact, Adv. Shri Mane, the learned counsel for the employer has submitted that the question of complying with Sec.25-F does not arise because the services of the workman are terminated in terms of the provision of certified standing orders. Therefore, admittedly, there is no compliance of Sec. 25 F of the I. D. Act, 1947 from the employer. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. V/s Industrial Tribunal, Haryana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25 F renders the order of retrenchment invalid and inoperative. In the present case, since there is no compliance of the provisions of Sec. 25-F of the I. D. Act, 1947, from the employer, the termination of service of the workman becomes illegal, invalid and inoperative on this ground also, In the circumstances, in the light of what is discussed above, I held that the termination of the services of the workman by the employer is illegal and unjustified and hence I answer the issue No. 2 in the affirmative.

16. *Issue No. 3 :-* This issue pertains to the relief to be granted to the workman. It has been held by me that the termination of the services of the workman is illegal and unjustified. The ordinary rule is that when the order of termination of service is held to be illegal and unjustified, the workman should be reinstated in service with full back wages unless there are reasons which do not warranty reinstatement or full back wages. In the present case, the question of granting reinstatement to the workman does not arise because during the pendency of the reference, the employer reinstated the workman in service with effect from 5-5-91 and this fact was admitted by the workman. Therefore, in the present case, the question is limited to the extent whether the workman should be awarded full back wages for the period from the date of termination of his service till the date of his reinstatement i.e. from 15-5-87 to 5-5-91. The workman has claimed full back wages and other consequential benefits for the above said period. There is no evidence on record to show that the workman was gainfully employed during the above said period. However, the facts in the present case show that the workman himself was reponsible for the passing of the termination order by the employer. It is no doubt true that the workman has succeeded in proving that the was sick from 28-2-87 and therefore, he could not report for duties. However, this does not mean that the workman was absolved of his responsibility to inform the employer of his sickness and consequent absence from duties. Nothing prevented the workman from informing

or intimating to the employer that he is not in a position to report for work because of his sickness. There is no evidence that the workman had informed the employer about his sickness as a result of which he was not in a position to report for work. Therefore, the workman himself is to be blamed for issuing of the termination letter by the employer. The Supreme Court in the case of D. K. Yadav (Supra) granted 50% of the back wages to the workman on the ground that equally the workman was to be blamed for the impugned action of the employer. In that case also, the services of the workman were terminated in terms of the Certified Standing Orders which provided termination if the workman remained absent from duty for more than eight days. Besides, in the present case, the services of the workman were terminated w.e.f. 15-5-87. However, the workman raised the dispute before the Dy. Labour Commissioner after lapse of 2 years. This can be seen from the minutes of the conciliation proceedings dated 19-4-90 Exb. 28 held before the Dy. Labour Commissioner. In the said minutes, it is recorded that the employer had raised the contention that the workman had raised the dispute after lapse of 2 years which showed that he was not interested in working with the employer. Shri K. V. Nadkarni, representing the workman submitted in the course of his arguments that the delay in raising the dispute was due to the fact that the appeals were pending before the concerned authorities of the employer. Adv. Shri Mane, the learned Counsel for the employer has relied upon the decision of the Supreme Court in the case of Bhoop Singh V/s Union of India and others reported in 1992 II CLR 5 in support of his contention that the workman is not entitled to any relief on account of delay in raising the dispute. I have gone through the said decision of the Supreme Court and I am of the view that the said decision cannot be applied to the facts in the present case. In the case before the Supreme Court, the Petitioner Bhoop Singh had approached the Court about 22 years after his dismissal without giving any cogent explanation for the inordinate delay. His contention was that other constables who were similarly dismissed had been reinstated as a result of their earlier petitions being allowed. The Supreme Court held that if this contention of the petitioner was accepted, it would upset the entire service jurisdrudence. The Supreme Court therefore, rejected the Petition. In the present case, the delay in raising the dispute is about 2 years or so. The workman has tried to argue that the delay was on account of the pending appeals. Infact in my view, merely because appeals were pending before the authorities of the employer, it did not mean that the workman could not have raised the dispute. The workman could have raised the dispute simultaneously. Even otherwise, the documentary evidence produced by the employer shows that the appeals were disposed of much earlier to the raising of the dispute. By letter dated 6-7-87, Exb. 24 colly, the workman was intimated that his appeal dated 24-6-87 was rejected by the Managing Director and by letter dated 13-1-88 Exb. 24 colly, the workman was intimated that his second appeal dated 8-12-87 was also rejected. Therefore, the contention of the workman that there was delay of more than 2 years because of the pendency of the appeals cannot be accepted. Even if it is presumed that the dispute was not raised before the Dy. Labour Commissioner because of the pendency of the appeals, the documents referred to above show that the said appeals were disposed of by January, 1988 whereas the dispute was raised about more than one and half year thereafter. There is no explanation for this delay. Besides the employer has produced warning and memos issued to the workman at Exb. 25 to 27. The said warning and memos have been produced by the employer through its witness Shri Cuncolienkar. The workman did not dispute the said documents in the cross examination of the said witness. Infact, the workman did not cross examine the said witness at all on the said documents. Thus the said documents have gone unchallenged. These documents show that the performance of the workman was not satisfactory and hence he had to be warned in that respect. Considering all the above aspects, I am of the view that it is just and proper to award 50% of the back wages to the workman and not the full wages for the period from 15-5-87 to 5-5-91 which is the period of his unemployment. I therefore hold that the workman is entitled to 50% of the backwages for the period from 15-5-87 to 5-5-91. The workman shall be also entitled for continuity in service and other benefits.

In the circumstances, I pass the following order:-

ORDER

It is hereby held that the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in terminating the services of the workman Shri Pundalik N. Morajkar, Driver, with effect from 15-5-1987 is illegal and unjustified. The management of M/s Kadamba Transport Corporation Limited, Panaji, shall pay to the workman Shri Pundalik N. Morajkar 50 percent of his wages for the period of his unemployment from 15-5-87 to 5-5-91. The workman Shri Pundalik N. Morajkar shall also be entitled for continuity in service and other benefits.

No order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Department of Personnel

Order

No. 15/2/80-PER/Part/DR

Read: Memorandum No. 15/2/80-PER/part/DR dated 4-3-1997 and No. 15/2/80-PER/ part/DR dated 3-6-1998.

On the recommendation of the Goa Public Service Commission as conveyed vide their letters No. COM/I/5/42 (2)/89-95/Vol. II dated 17-2-1997 and No. COM/I/5/42 (2)/89-97/Vol. III dated 4-5-1998, Government of Goa is pleased to appoint the following candidates to the Grade of Mamlatdars/Joint Mamlatdars/Assistant Director of Civil Supplies in the pay scale of Rs. 5500-175-9000 (Group 'B' Gazetted) with effect from the date of their joining and post them as follows:-

Sr. No.	Name of the candidate	Posted on appointment
1.	Miss Upasana M. Majgaonkar	Joint Mamlatdar, Ponda.
2.	Shri Amarsen W. Rane	Joint Mamlatdar, Bardez.
3.	Shri Anthony J. D'Souza	Joint Mamlatdar, Bardez.
4.	Shri Sabaji P. Shetye	Joint Mamlatdar, Bicholim.
5.	Shri Prashant P. Shirodkar	Joint Mamlatdar, Canacona.
6.	Shri Sanjeev C. Gauns Desai	Joint Mamlatdar, Ponda.
7.	Miss Biju R. Naik	Joint Mamlatdar, Tiswadi
8.	Shri Suresh P. Pilernekar	Joint Mamlatdar, Tiswadi.
9.	Shri Mahesh Corjuenkar	Joint Mamlatdar, Bicholim.

2. They shall be on probation for a period of two years.

3. The above officers shall be provided on the job training for a period of one year. Both the Collectors North/South Goa Districts shall personally supervise their training programme.

4. All the above mentioned candidates have been declared medically fit by the Medical Board. Their character and antecendents have also been verified.

5. The pay and allowances of the above candidates shall be debited to the Budget Head controlled by the respective Collectors North/South Goa Districts.

By order in the name of the Governor of Goa.

Armando Mascarenhas, Joint Secretary (Personnel).

Panaji, 22nd December, 1998.

Department of Revenue

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Order

No. 18/1/ 93-RD

Read:- Order No. 6/8/91-PER (Part), dated 23-3-1999, issued by the Personnel Department.

On placement of the services of Kum. Margaret Fernandes, Assistant Director (Finance Commission Cell) and Kum. Juliet Moraes, Secretary, State Election Commission, both Junior Scale Officers of Goa Civil Service, by the Department of Personnel, and in exercise of the powers conferred by Article 118 of the Legislative Diploma No. 2070 dated 15-4-1961, the Governor of Goa is pleased to appoint Kum. Margaret Fernandes as the Administrator of Comunidades of Central Zone, Panaji and Kum. Juliet Moraes as Administrator of Comunidades of North Zone, Mapusa, with immediate effect. Thus relieving S/Shri Elvis Gomes and K. S. Pooniah of their respective additional charge.

The above appointment shall be on deputation, which shall be initially for a period of one year and shall be governed by the standard terms of deputation as contained in the Personnel Department's O. M. No. 13/4/74-PER dated 10-10-1990 as amended from time to time.

By order and in the name of the Governor of Goa.

Smt. *A. Menezes,* Under Secretary (Revenue).

Panaji, 26th March, 1999.

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